

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JERRY JOHNSON)	
Claimant)	
VS.)	
)	Docket Nos. 241,836 & 242,699
DOCTOR'S LAWN & LANDSCAPE)	
Respondent)	
AND)	
)	
UNION INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample on October 6, 1999.

ISSUES

Did claimant give timely notice of injury as required by K.S.A. 44-520?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board concludes the ALJ's Order for preliminary hearing benefits should be affirmed.

This is the second appeal in this case from a preliminary hearing. Timely notice was also an issue in the first appeal. K.S.A. 44-520 requires notice within 10 days but allows the time to be extended to 75 days if there was just cause for the failure to give notice within the initial 10 days. In the first appeal, the Board found the date of accident was December 14, 1998, and found respondent received notice when the insurance carrier's representative learned of test results which showed claimant had carpal tunnel syndrome. This was not later than February 11, 1999. Although February 11, 1999, was more than 10 days after the date of accident, the Board found there was just cause for the delay. Since the notice was less than 75 days after the accident, it was considered timely.

In this second appeal, notice is again the issue. Two factors are different from the previous appeal. First, this appeal concerns notice of injury to the right wrist. The previous appeal concerned notice of injury to the left wrist. Second, the evidence in this case shows

claimant's last day of work, and accordingly the date of accident, was December 1 or 2, not the 14th as earlier indicated.

In spite of these differences, the ALJ found notice was timely and, in fact, relied on the Board's earlier ruling. The Board agrees. The earlier ruling found notice at the time the insurance carrier reviewed Dr. John A. Gillen II's records. Those records contained tests which showed claimant had bilateral carpal tunnel syndrome. If the records were notice of injury to the left wrist, they were also notice of injury to the right. In addition, the Board previously found just cause for failure to give notice within 10 days. The just cause was found in the fact the cause of claimant's symptoms and work connection was not initially known. Nothing in the second hearing gives a reason for changing either conclusion. The change in the date of accident does not extend the notice beyond the 75-day limit. Accordingly, the Board finds, as it did in the first appeal, that respondent had timely notice.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Julie A. N. Sample on October 6, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: Michael W. Downing, Kansas City, MO
Mark A. Buck, Topeka, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director